

DATE: February 19, 1988

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Save Mission Beach Park Initiative

This memorandum is being written to you in response to your memorandum to John Witt dated January 7, 1988 regarding this subject. Please excuse our inordinate delay in responding, but we are unable to locate your original request. It apparently has been misplaced or misfiled and I learned of this inquiry in a discussion with Ben Dillingham last week on the same general subject.

In response to your additional questions, seriatim:

QUESTION 1.

What options are available to the City to relieve itself of its obligations under the current lease agreement with Belmont Park Associates?

ANSWER

To relieve the City of its obligations under the current lease with Belmont Park Associates, the City Council could:

- a) Refuse to hold the determination regarding "vested rights" called for by the developer and direct the City Manager to cause the project to be terminated, thereby exposing itself to monetary damage for alleged breach of contract.
- b) Direct the City Attorney to commence an action in Eminent Domain to acquire the project, assuming a case could be made for a higher and better use in the City's hands, and acquire the property rights at their existing fair market value.

QUESTION 2.

If it is determined that the City should terminate its agreement with Belmont Park Associates, what potential difficulties would this pose?

ANSWER

See answer to Question 1.

QUESTION 3.

If the City decides to terminate the agreement and Belmont Park Associates brings suit, given current circumstances, what potential damages do you believe the City may incur?

ANSWER

The general rule is that a breach of contract, if any, is compensable by all general and special damages arising from the breach. This could include all expenditures by developers to date, interest, damages to third parties, if any, loss of profits and depending upon the circumstances, punitive damages for an intentional breach of the agreement.

QUESTION 4.

Given the overwhelming passage of Proposition G, it is my belief that the citizens of San Diego issued a mandate to the City to halt development of Belmont Park. How, in your opinion, can we best effectuate the expressed desire of the citizens to meet this mandate?

ANSWER

If the project is to be halted, it is my view that the best method to proceed would be through an action in Eminent Domain.

QUESTION 5.

Assuming a decision by the City Council to terminate the agreement with Belmont Park Associates, and recognizing the fact that termination of the agreement may

result in monetary damages to the City, how can such potential damages best be mitigated?

ANSWER

See answer to Question 4.

Attached to this memorandum is a Request for Council Action regarding the initiative. We urge you to go forward with the process outlined in our earlier opinion to you.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

CMF:js:930.62(x043.2)

Attachment

ML-88-12